

This Opinion Is Not a
Precedent of the TTAB

Mailed: September 10, 2021

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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New York Mercantile Exchange, Inc.

v.

North American Monetary Exchange Corporation

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Opposition No. 91225279
—

Joseph V. Norvell, Tom M. Monagan, and Alexis N. Degler of Norvell IP llc
for New York Mercantile Exchange, Inc.

Lawrence D. Hilton of Legal Tender Services PLLC
for North American Monetary Exchange.

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Before Bergsman, Wellington and Allard, Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

North American Monetary Exchange Corporation (Applicant) seeks registration on the Principal Register of the mark NAMX, in standard character form, for the services listed below:

Financial services, namely, electronic funds transfer; clearing and reconciling financial transactions; providing a wide variety of payment and financial services, namely, credit card services, issuing credit cards and lines of credit, electronic payment services involving electronic processing and subsequent transmission of bill payment data, bill payment services with guaranteed payment delivery, and

brokerage of securities and money market funds, all conducted via a global communications network; legal tender exchange services, namely, money exchange services and cash exchange transactions; currency exchange services; exchange rate services, namely, financial information in the nature of rates of exchange; credit card and debit card transaction processing services; reimbursement of funds for disputed items in the field of electronic payment purchases; providing purchase protection services for goods and services purchased by others via a global computer network and wireless networks; credit card transaction processing services; credit services, namely, providing revolving credit account services; bill payment services; providing electronic mobile payment services for others; credit card and payment processing services; electronic foreign exchange payment processing; payment processing services, namely, providing virtual currency transaction processing services for others, in International Class 36.¹

New York Mercantile Exchange, Inc. (Opposer) opposes the registration of Applicant's mark on the grounds of likelihood of confusion under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), and dilution under Section 43(c) of the Trademark Act, 15 U.S.C. § 1125(c). Specifically, Opposer pleads Applicant's mark is likely to cause confusion with Opposer's three registered mark NYMEX, in typed drawing or standard character form,² for the services listed below:

¹ Serial No. 86561412 filed March 11, 2015 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on Applicant's assertion of a bona fide intent to use the mark in commerce.

² Prior to November 2, 2003, the USPTO referred to "standard character" drawings as "typed" drawings. Effective November 2, 2003, the USPTO amended Trademark Rule 2.52, 37 C.F.R. § 2.52, to replace the term "typed" drawing with "standard character" drawing. A typed mark is the legal equivalent of a standard character mark. *See In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1909 n.2 (Fed. Cir. 2012) ("until 2003, 'standard character' marks formerly were known as 'typed' marks.").

- Registration No. 1731593 for “operation of an exchange market for trading in commodities futures contracts,” in International Class 36;³

- Registration No. 2656475 for “providing information on settlement prices, trading prices, bid and ask prices, price ranges, volume data, and other market data on commodity futures contracts and options on commodity futures contracts,” in International Class 36;⁴ and

- Registration No. 3436974 for “providing financial and investment information services; providing financial services, namely, providing open out-cry and electronic exchange markets for trading, clearing, confirming transactions and other services in the field of commodity futures, options and other derivatives; providing information on settlement prices, trading prices, bid and ask prices, price ranges, volume data and other market data on commodity future contracts, options and other derivatives based on an index,” in International Class 36.⁵

Opposer also alleged ownership of “extensive common law rights in its family of NYMEX trademarks in connection with a wide variety of financial-related goods and services, such as financial trading/exchange services, financial information services, market data services, and related financial/investment services.”⁶

Applicant, in its Answer, denies the salient allegations of the Notice of Opposition.

³ Registered November 10, 1992; renewed.

⁴ Registered December 3, 2002; renewed.

⁵ Registered May 27, 2008; renewed.

⁶ Notice of Opposition ¶5 (1 TTABVUE 7).

I. Preliminary Issues

A. Size limitations for ESTTA filings.

ESTTA – the Electronic System for Trademark Trials and Appeals – is the Board’s electronic filing system. The Board requires use of ESTTA for the filing of all submissions in Board proceedings and for filing of extensions of time to oppose.

ESTTA is suited for large filings such as trial testimony and notices of reliance. There is no specific limit to the amount of evidence one may submit in support of a Board proceeding. However, parties should be aware of certain system limitations. A party may attach one or more files to any ESTTA form that permits or requires an attachment. The size limit for each file attached is 6 MB, and the aggregate of all attached files for a single ESTTA transmission may not exceed 53 MB. However, because very large files degrade the performance of the Board’s electronic file system, filers should limit each ESTTA submission to no more than an aggregate (all attached files combined) so as not to exceed the limitations. If a single submission, e.g., a single testimonial transcript or notice of reliance, will exceed the limitations, it should be broken into two or more submissions, in logical segments, filed consecutively.

In this case, Opposer filed one notice of reliance comprising 2,207 pages making the notice of reliance difficult to navigate. In the future, Opposer’s counsel should divide its notice of reliance into logical segments and file them separately.

B. Illegible document

The Kevin LaPierre testimony declaration Exhibit L is illegible.⁷ The party who introduces Internet materials must ensure that the evidence is legible. *See, e.g., RxD Media, LLC v. IP Application Dev. LLC*, 125 USPQ2d 1801, 1806 n.16 (TTAB 2018) (“Illegible evidence is given no consideration.”), *aff’d*, 377 F. Supp. 3d 588 (E.D. Va. 2019), *aff’d*, 986 F.3d 361, 2021 USPQ2d 81 (4th Cir. 2021); *Alcatraz Media, Inc. v. Chesapeake Marine Tours, Inc.*, 107 USPQ2d 1750, 1753 n.6 (TTAB 2013) (citing *Hard Rock Café Licensing Corp. v. Elsea*, 48 USPQ2d 1400, 1404 (TTAB 1998) (“It is reasonable to assume that it is opposer’s responsibility to review the documents it submits as evidence to ensure that such submissions meet certain basic requirements, such as that they are legible”)), *aff’d mem.*, 565 F. App’x 900 (Fed. Cir. 2014); *Weider Publ’ns, LLC v. D&D Beauty Care Co.*, 109 USPQ2d 1347, 1351-52 (TTAB 2014) (duty of the party making submissions to the Board via ESTTA to ensure that they have been entered into the trial record), *appeal dismissed per stipulation*, No. 14-1461 (Fed. Cir. Oct. 10, 2014). Because the document is illegible, we cannot consider it.

C. Documents that may not be filed through a notice of reliance.

Opposer introduced, inter alia, the following documents through its notice of reliance:

- Gold Futures and Options Brochure 2016;⁸

⁷ 61 TTABVUE 110-118.

⁸ 61 TTABVUE 1936-1939. The document does not display NYMEX.

- CME Monthly Metals Review – July 2016;⁹
- CME Monthly Metals Review – August 2016;¹⁰
- CME Monthly Metals Review – September 2016;¹¹
- CME Monthly Metals Review – October 2016;¹²
- CME Monthly Metals Review – November 2016;¹³
- CME Monthly Metals Review – December 2016;¹⁴
- Platinum and Palladium Futures and Options – 2016;¹⁵
- Precious Metals Update – July 2016;¹⁶
- Precious Metals Update – August 2016;¹⁷
- Precious Metals Update – September 2016;¹⁸
- Precious Metals Spot Spread – 2016;¹⁹
- Metals Sales Brochure – 2017;²⁰ and

⁹ 61 TTABVUE 1941-1957. The document displays NYMEX as the title of one of 26 graphs.

¹⁰ 61 TTABVUE 1959-1975. The document displays NYMEX as the title of one of 26 graphs.

¹¹ 61 TTABVUE 1977-1993. The document displays NYMEX as the title of one of 26 graphs.

¹² 61 TTABVUE 1195-2012. The document displays NYMEX as the title of one of 26 graphs.

¹³ 61 TTABVUE 2014-2031. The document displays NYMEX as the title of one of 26 graphs.

¹⁴ 61 TTABVUE 2033-2050. The document displays NYMEX as the title of one of 26 graphs.

¹⁵ 61 TTABVUE 2052-2055. The document displays the CME Group logo as the dominant mark and NYMEX is buried in text.

¹⁶ 61 TTABVUE 2057-2060. The document does not display the NYMEX mark.

¹⁷ 61 TTABVUE 2062-2065. The document does not display the NYMEX mark.

¹⁸ 61 TTABVUE 2067-2070. The document does not display the NYMEX mark.

¹⁹ 61 TTABVUE 2072-2196. The document does not display the NYMEX mark.

²⁰ 61 TTABVUE 2198-2207. The documents display the CME Group logo as the dominant mark. The NYMEX mark is displayed as “NYMEX/COMEX Exchange ADV Report – Monthly” as the title of a table.

- [Applicant's] NAMX 2016 Business Plan.²¹

A party may not introduce these documents through a notice of reliance. Trademark Rule 2.122(e), 37 C.F.R. § 2.122(e) provides, so far as pertinent, that a party may introduce the following documents through a notice of reliance:

(e) Printed publications and official records.

(1) Printed publications, such as books and periodicals, available to the general public in libraries or of general circulation among members of the public or that segment of the public which is relevant in a particular proceeding, and official records, if the publication or official record is competent evidence and relevant to an issue, may be introduced in evidence by filing a notice of reliance on the material being offered in accordance with paragraph (g) of this section. ...

(2) Internet materials may be admitted into evidence under a notice of reliance in accordance with paragraph (g) of this section, in the same manner as a printed publication in general circulation, so long as the date the internet materials were accessed and their source (e.g., URL) are provided.

Starting with the last bulleted document first, i.e., Applicant's business plan, Opposer indicates "produced by Applicant" presumably during discovery. However, the Trademark Rules expressly provide that a party may not introduce into the record documents received in response to request for production of documents by a notice of reliance alone. *See* Trademark 2.120(k)(3)(ii), 37 C.F.R. § 2.120(k)(3)(ii).

With respect to the remaining documents bulleted above, Opposer did not provide a URL or the requisite date of access. Even if these documents were admissible through a notice of reliance, they would have little, if any, probative value because

²¹ 62 TTABVUE (designated Confidential Attorney's Eyes Only).

they do not display the NYMEX mark or, if they do display the mark, Opposer buried the mark in text.

We do not consider the above-noted documents.

D. Late filed evidence.

Applicant introduced the declaration of Mark J. Hilton, Applicant's President, as an attachment to its brief.²² Opposer, in its Reply Brief, objects to the late filed testimony.²³

"A party may not take testimony or present evidence outside of its assigned testimony period, except by stipulation of the parties approved by the Board, or, by order of the Board." TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 701 (2021). *See also Hole In 1 Drinks, Inc. v. Lajtay*, 2020 USPQ2d 71345, at *2 (TTAB 2020) ("[A] party may introduce testimony and evidence only during its assigned testimony period."); *Optimal Chemical Inc. v. Srills LLC*, 2019 USPQ2d 338409, at *3 n.28 (TTAB 2019) (submission of exhibits to the notice of reliance one month after the rebuttal period was untimely; however, since respondent did not object to their timeliness, the procedural objection was waived); *Baseball Am. Inc. v. Powerplay Sports*, 71 USPQ2d 1844, 1846 n.8 (TTAB 2004) (documentary evidence submitted outside assigned testimony period given no consideration); *M-Tek Inc. v. CVP Sys. Inc.*, 17 USPQ2d 1070, 1072 (TTAB 1990) (untimely deposition stricken).

²² 70 TTABVUE 12.

²³ Opposer's Reply Brief, p. 5 (71 TTABVUE 6).

We sustain the objection to the late filed Hilton declaration and we will not consider it.

E. Opposer’s “family of marks” claim.

As noted above, Opposer alleged ownership of “extensive common law rights in its family of NYMEX trademarks in connection with a wide variety of financial-related goods and services, such as financial trading/exchange services, financial information services, market data services, and related financial/investment services.”²⁴

A family of marks is a group of marks having a recognizable common characteristic, wherein the marks are composed and used in such a way that the public associates not only the individual marks, but the common characteristic of the family, with the trademark owner. Simply using a series of similar marks does not of itself establish the existence of a family. There must be a recognition among the purchasing public that the common characteristic is indicative of a common origin of the goods. For example, in *AMF, Inc. v. American Leisure Products, Inc.*, 474 F.2d 1403, 1406, 177 USPQ 268, 270 (CCPA 1973) the court held that AMF had established a family of marks of “fish” names for sailboats, based on advertising, use, and distinctiveness of the names. In *Motorola, Inc. v. Griffiths Electronics, Inc.*, 317 F.2d 397, 399, 137 USPQ 551, 553, 50 C.C.P.A. 1518 (CCPA 1963) it was held that the use and advertisement of the marks GOLDEN VOICE, GOLDEN BEAM, GOLDEN VIEW, and several other “golden” marks, together with the primary mark MOTOROLA, established a pattern of use and recognition of a family of marks in which “golden” is a dominant feature. In *International Diagnostics Technology, Inc. v. Miles Laboratories, Inc.*, 746 F.2d 798, 800, 223 USPQ 977, 978 (Fed.Cir.1984) this court observed that millions of dollars in advertising contributed to recognition of the family of STIX marks.

²⁴ Notice of Opposition ¶5 (1 TTABVUE 7).

J & J Snack Foods Corp. v. McDonald's Corp., 932 F.2d 1460, 18 USPQ2d 1889, 1462-63 (Fed. Cir. 1991).

In this opposition, however, Opposer introduced evidence relating only to its NYMEX mark and not to a group of marks sharing NYMEX. For example, Opposer does not refer to its purported NYMEX family of marks when analyzing the strength of NYMEX, the similarity or dissimilarity of the marks, or the similarity or dissimilarity and nature of the services. When Opposer analyzed the similarity or dissimilarity and nature of the services, Opposer inserted a table in its brief comparing Applicant's claimed services and the services in Opposer's pleaded registrations.²⁵ Opposer did not include any services rendered under any other mark that is a member of the purported NYMEX family of marks.

Because Opposer failed to introduce any evidence regarding its purported family of NYMEX marks or make any arguments regarding its purported family of NYMEX marks in its brief, Opposer waived its family of marks claim. *See Alcatraz Media*, 107 USPQ2d at 1754 (“Insofar as petitioner has not argued the descriptive or geographically descriptive claims in its brief, we find, in accordance with the Board's usual practice, that those claims have been waived.”).

II. The Record

The record includes the pleadings and, by operation of Trademark Rule 2.122(b), 37 C.F.R. § 2.122(b), Applicant's application file.

²⁵ Opposer's Brief, pp. 18-19 (63 TTABVUE 23-24).

Only Opposer introduced testimony and other evidence. Opposer's notice of reliance, in addition to the documents discussed above, includes the following testimony and other evidence:

- Copies of Opposer's pleaded registrations printed from the USPTO Trademark Status and Document Retrieval System (TSDR) displaying the current status and title to the registrations;²⁶
- Copy of Opposer's application Serial No. 86787611 for the mark NYMEX BRENT, in standard character form;²⁷
- Copies of Opposer's three registrations for the mark NEW YORK MERCANTILE EXCHANGE;²⁸
- An article on the history of Commodity Exchange Inc. (COMEX) (<http://info.goldavenue.com>);²⁹
- Testimony declaration of Kevin LaPierre, Opposer's Executive Director of Product Marketing;³⁰
- Testimony declaration of Young-Jin Chang, CME Group, Inc.'s Managing Director, Global Head of Metal Products;³¹

²⁶ 61 TTABVUE 15-28.

²⁷ 61 TTABVUE 30-34.

²⁸ 61 TTABVUE 36-43.

²⁹ 61 TTABVUE 45-47.

³⁰ 61 TTABVUE 49-118. Opposer "is an indirect wholly-owned subsidiary of CME Group Inc." LaPierre Decl. ¶1 (61 TTABVUE 49).

³¹ 61 TTABVUE 120-131.

- Excerpts from the discovery deposition of Glen Hilton, Applicant’s Chief Executive Officer;³²
- Copies of Opposer’s certificate of incorporation and the certificate of incorporation of Commodity Exchange Inc.;³³
- Copies of annual reports of Commodity Exchange, Inc.³⁴
- Copies of Securities and Exchange Commission Forms 10-K for Commodity Exchange, Inc.;³⁵
- A copy of NYMEX/COMEX Monthly Volumes;³⁶ 27
- A copy of Designated Contract Markets –List of Products Traded on COMEX;³⁷
- A copy of CME Futures Fundamentals website;³⁸ and
- A copy of Opposer’s 2007 Annual Report.³⁹

III. Entitlement to a Statutory Cause of Action⁴⁰

Opposer’s entitlement to a statutory cause of action, formerly referred to as “standing” by the Federal Circuit and the Board, is an element of the plaintiff’s case in every inter partes case. *See Corcamore, LLC v. SFM, LLC*, 978 F.3d 1298,

³² 61 TTABVUE 133-142.

³³ 61 TTABVUE 144-152.

³⁴ 61 TTABVUE 154-1405.

³⁵ 61 TTABVUE 1407-1632.

³⁶ 61 TTABVUE 1634-1647.

³⁷ 61 TTABVUE 1649-1650.

³⁸ 61 TTABVUE 1652-1796.

³⁹ 61 TTABVUE 1798-1934.

⁴⁰ Even though we now refer to standing as entitlement to a statutory cause of action, our prior decisions and those of the Federal Circuit interpreting “standing” under §§ 1063 and 1064 remain applicable.

2020 USPQ2d 11277 (Fed. Cir. 2020)), *cert. denied*, ___ S. Ct. ___ (2021); *Australian Therapeutic Supplies Pty. Ltd. v. Naked TM, LLC*, 965 F.3d 1370, 2020 USPQ2d 10837 (Fed. Cir. 2020), *reh'g en banc denied* 981 F.3d 1083, 2020 USPQ2d 11438 (Fed. Cir. 2020), *petition for cert. filed*; *Empresa Cubana Del Tabaco v. Gen. Cigar Co.*, 753 F.3d 1270, 111 USPQ2d 1058, 1062 (Fed. Cir. 2014). To establish entitlement to a statutory cause of action, a plaintiff must demonstrate: (i) an interest falling within the zone of interests protected by the statute and (ii) a reasonable belief in damage proximately caused by the registration of the mark. *Corcamore*, 2020 USPQ2d 11277 at *4. *See also Empresa Cubana*, 111 USPQ2d at 1062; *Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023, 1025 (Fed. Cir. 1999); *Lipton Indus., Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185, 189 (TTAB 1982).

Because Opposer has properly introduced into evidence copies of its pleaded registrations showing the current status of and title to the registrations, Opposer has established its entitlement to a statutory cause of action. *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000); *Primrose Ret. Cmtys.*, 122 USPQ2d at 1032 (standing established based on pleaded registration made of record).

IV. Priority

Because Opposer has properly made of record copies of its pleaded registrations and they have not been challenged by way of a counterclaim or cancellation, priority is not an issue as to the mark and goods and services covered by the registrations. *See Mini Melts, Inc. v. Reckitt Benckiser LLC*, 118 USPQ2d 1464, 1469 (TTAB 2016)

(citing *King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108, 110 (CCPA 1974)).

V. Likelihood of Confusion

We base our determination under Section 2(d) on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (“*DuPont*”), cited in *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 113 USPQ2d 2045, 2049 (2015). See also *In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). “In discharging this duty, the thirteen *DuPont* factors ‘must be considered’ ‘when [they] are of record.’” *In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162 (Fed. Cir. 2019) (quoting *In re Dixie Rests. Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1533 (Fed. Cir. 1997) and *DuPont*, 177 USPQ at 567). “Not all *DuPont* factors are relevant in each case, and the weight afforded to each factor depends on the circumstances. Any single factor may control a particular case.” *Stratus Networks, Inc. v. UBTA-UBET Commc’ns Inc.*, 955 F.3d 994, 2020 USPQ2d 10341, *3 (Fed. Cir. 2020) (citing *Dixie Rests.*, 41 USPQ2d at 1406-07).

“Each case must be decided on its own facts and the differences are often subtle ones.” *Indus. Nucleonics Corp. v. Hinde*, 475 F.2d 1197, 177 USPQ 386, 387 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods or services. See *In re Chatam Int’l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944, 1945-46 (Fed. Cir. 2004); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29

(CCPA 1976) (“The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.”). *See also In re i.am.symbolic, llc*, 866 F.3d 1315, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017) (“The likelihood of confusion analysis considers all *DuPont* factors for which there is record evidence but ‘may focus ... on dispositive factors, such as similarity of the marks and relatedness of the goods.’”) (quoting *Herbko Int’l v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)).

A. Similarity or dissimilarity and nature of the services.

Opposer has registered its mark for, inter alia, “providing financial services, namely, providing open out-cry and electronic exchange markets for trading, clearing, confirming transactions and other services in the field of commodity futures, options and other derivatives.”⁴¹

Applicant is seeking to register its mark for, inter alia, “financial services, namely, electronic funds transfer; clearing and reconciling financial transactions; ... currency exchange services.” Glen Hilton, Applicant’s Chief Executive Officer, testified that “clearing and reconciling financial transactions” means “payment of bills” and “providing a wide variety of payment and financial services - - certainly payment for goods and services.”⁴² “Currency exchange services” means exchanging gold, silver, and platinum for U.S. dollars.⁴³

⁴¹ 61 TTABVUE 25.

⁴² Hilton Discovery Dep., p. 20 (61 TTABVUE 139).

⁴³ Hilton Discovery Dep., p. 22 (61 TTABVUE 140).

Although we are required to consider the services as they are described in the application and registration, *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 1321, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014), we may consider Hilton’s testimony to shed necessary light on the significance of the identifications of services at issue here. *See Edwards Lifesciences Corp. v. VigiLanz Corp.*, 94 USPQ2d 1399,1410 (TTAB 2010) (“Where, as here, applicant’s description of goods provides basic information, and the goods are of a technical nature, it is entirely appropriate to consider extrinsic evidence to determine the specific meaning of the description of goods.”); *Pharmacia Inc. v. Asahi Med. Co., Ltd.*, 222 USPQ 84, 85-86 (TTAB 1984) (the Board must be concerned that the uses and meanings of technical or scientific terms in the description of goods have been made clear to properly assess the relationship between the goods). *See also In re W.W. Henry Co.*, 82 USPQ2d 1213, 1215 (TTAB 2007); *In re Trackmobile Inc.*, 15 USPQ2d 1152 (TTAB 1990) (“[W]hen the description of goods for a cited registration is somewhat unclear, as is the case herein, it is improper to simply consider that description in a vacuum and attach all possible interpretations to it when the applicant has presented extrinsic evidence showing that the description of goods has a specific meaning to members of the trade.” (internal citations omitted)). We have considered Hilton’s testimony in that light and not as an improper attempt to restrict either parties’ services as identified in their respective descriptions of services.

We find that Applicant’s “clearing and reconciling financial transactions” and “currency exchange services” are broad enough to encompass Opposer’s “providing

financial services, namely, providing ... electronic exchange markets for trading, clearing, confirming transactions and other services in the field of commodity futures, options and other derivatives.” Thus, the services are in part legally identical. Where services are broadly identified in an application or registration, “we must presume that the services encompass all services of the type identified.” *Sw. Mgmt., Inc. v. Ocinomled, Ltd.*, 115 USPQ2d 1007, 1025 (TTAB 2015). *See also Venture Out Props. LLC v. Wynn Resorts Holdings, LLC*, 81 USPQ2d 1887, 1893 (TTAB 2007).

Under this *DuPont* factor, the Opposer need not prove, and we need not find, similarity as to each activity listed in the description of services. It is sufficient for us to find the services related where the relatedness is established for any item activity encompassed by the identification of services the application or registration. *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981); *Inter IKEA Sys. B.V. v. Akea, LLC*, 110 USPQ2d 1734, 1745 (TTAB 2014); *General Mills Inc. v. Fage Dairy Processing Indus. SA*, 100 USPQ2d 1584, 1588 n.1 (TTAB 2011), *judgment set aside on other grounds*, 110 USPQ2d 1679 (TTAB 2014).

We find the services are in part legally identical.

B. Established, likely-to-continue channels of trade.

Because the services are in part legally identical, we presume that the channels of trade and classes of purchasers are the same for those services. *See Viterra*, 101 USPQ2d at 1908 (legally identical goods are presumed to travel in same channels of trade to same class of purchasers); *In re Inn at St. John’s, LLC*, 126 USPQ2d 1742, 1745 (TTAB 2018), *aff’d mem.* (No. 18-2236) (Fed. Cir. September 13, 2019) (“Because the services described in the application and the cited registration are identical, we

presume that the channels of trade and classes of purchasers are the same.”); *Am. Lebanese Syrian Associated Charities Inc. v. Child Health Research Inst.*, 101 USPQ2d 1022, 1028 (TTAB 2011).

C. Conditions under which and customers to whom Opposer makes sales.

The relevant consuming public for the services rendered under Opposer’s NYMEX mark are individuals and companies that trade precious and industrial metals and energy contracts.⁴⁴ The relevant consumers also include individuals and companies to hedge risk, create security interests in metals, or invest in metals for the future.⁴⁵

[I]ndividuals, traders, financial institutions, investors, corporations and governments have come to rely upon and trust NYMEX for their financial, investment and risk management services related to the trading of these products. NYMEX has become the world’s most liquid marketplace for the exchange trading of platinum and palladium products.⁴⁶

The consumers who encounter both Opposer’s mark and Applicant’s mark are highly sophisticated, careful individuals who exercise a high degree of purchasing care.

This *DuPont* factor weighs against finding there is a likelihood of confusion.

D. The strength of Opposer’s mark, including fame (sales, advertising, length of use).

In determining the strength of a mark, we consider both its inherent strength, based on the nature of the mark itself, and its commercial strength, based on

⁴⁴ LaPierre Testimony Decl. ¶¶5 and 7 (61 TTABVUE 50); Chang Testimony Decl. ¶9 (61 TTABVUE 121).

⁴⁵ LaPierre Testimony Decl. ¶37 (61 TTABVUE 56).

⁴⁶ Chang Testimony Decl. ¶10 (61 TTABVUE 121-122).

marketplace recognition of the mark. *See In re Chippendales USA, Inc.*, 622 F.3d 1346, 96 USPQ2d 1681, 1686 (Fed. Cir. 2010) (“A mark’s strength is measured both by its conceptual strength (distinctiveness) and its marketplace strength (secondary meaning).”); *Top Tobacco, L.P. v. N. Atl. Operating Co., Inc.*, 101 USPQ2d 1163, 1171-72 (TTAB 2011) (the strength of a mark is determined by assessing its inherent strength and its commercial strength); *Tea Bd. of India v. Republic of Tea Inc.*, 80 USPQ2d 1881, 1899 (TTAB 2006); 2 MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 11:83 (5th ed. 2021) (“The first enquiry focuses on the inherent potential of the term at the time of its first use. The second evaluates the actual customer recognition value of the mark at the time registration is sought or at the time the mark is asserted in litigation to prevent another’s use.”). Market strength is the extent to which the relevant public recognizes a mark as denoting a single source. *Tea Bd. of India*, 80 USPQ2d at 1899.

1. The inherent strength of Opposer’s NYMEX mark.

Because Opposer’s mark is registered on the Principal Register, with no claim of acquired distinctiveness under Section 2(f), we presume it is inherently distinctive (i.e., that it is at worst suggestive of those services). 15 U.S.C. § 1057(b) (registration is “prima facie evidence of the validity of the registered mark”); *In re Fiesta Palms, LLC*, 85 USPQ2d 1360, 1363 (TTAB 2007) (when mark is registered on the Principal Register, “we must assume that it is at least suggestive”).

2. The commercial strength of Opposer's NYMEX mark.

Opposer contends that “NYMEX is a Strong and Famous Mark.”⁴⁷ Fame, if it exists, plays a dominant role in the likelihood of confusion analysis because famous marks enjoy a broad scope of protection or exclusivity of use because they have extensive public recognition and renown. *Bose Corp. v. QSC Audio Prods. Inc.*, 293 F.3d 1367, 63 USPQ2d 1303, 1305 (Fed. Cir. 2002); *Recot Inc. v. M.C. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1897 (Fed. Cir. 2000); *Kenner Parker Toys, Inc. v. Rose Art Indus. Inc.*, 963 F.2d 350, 22 USPQ2d 1453, 1456 (Fed. Cir. 1992).

“[L]ikelihood of confusion fame ‘varies along a spectrum from very strong to very weak.’” *Joseph Phelps Vineyards, LLC v. Fairmount Holdings, LLC*, 857 F.3d 1323, 122 USPQ2d 1733, 1734 (Fed Cir. 2017) (quoting *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée en 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1694 (Fed. Cir. 2005) (quoting *In re Coors Brewing Co.*, 343 F.3d 1340, 68 USPQ2d 1059, 1063 (Fed. Cir. 2003))).

Fame may be measured indirectly by the volume of sales of and advertising expenditures for the goods and services identified by the mark at issue, “the length of time those indicia of commercial awareness have been evident,” widespread critical assessments and through notice by independent sources of the products identified by the marks, as well as the general reputation of the products and services. *Bose Corp.*, 63 USPQ2d at 1305-06, 1309. Although raw numbers of product sales and advertising expenses sometimes suffice to prove fame, raw numbers alone may be misleading.

⁴⁷ Opposer's Brief, p. 3 (63 TTABVUE 8).

Some context in which to place raw numbers may be necessary (e.g., the substantiality of the sales or advertising figures for comparable types of products or services). *Id.* at 1309.

Finally, because of the extreme deference that we accord a famous mark in terms of the wide latitude of legal protection it receives, and the dominant role fame plays in the likelihood of confusion analysis, it is the duty of the party asserting that its mark is famous to prove it clearly. *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1720 (Fed. Cir. 2012) (citing *Leading Jewelers Guild Inc. v. LJOW Holdings LLC*, 82 USPQ2d 1901, 1904 (TTAB 2007)).

Opposer introduced the following evidence to prove that NYMEX is a famous mark:

- “[Opposer] is on one of the world’s leading financial institutions for the trading of metals and energy products and has been for many decades.”⁴⁸
- According to Opposer’s 2007 annual Securities and Exchange Commission Form 10-K report attached to Opposer’s 2007 Annual Report, “[m]easured by 2007 contract volume, [Opposer] is the largest physical commodity-based futures exchange and clearinghouse in the world and the second-largest futures exchange in the United States.”⁴⁹

⁴⁸ LaPierre Testimony Decl. ¶5 (61 TTABVUE 50). *See also* Chang Testimony Decl. ¶9 (61 TTABVUE 121) (“[Opposer] serves as a contract market for the trading of platinum and palladium metals products.”).

⁴⁹ 61 TTABVUE 1829.

- “[Opposer] maintains an active internet presence and maintains internet websites at domain names incorporating its NYMEX brand, including www.nymex.com, which was originally registered in 1995 and redirects to www.cmegroup.com (the ‘CME Group Website’ or ‘Website’).”⁵⁰

- NYMEX trades as the NYMEX Division of CME specializing in energy, platinum, and palladium.⁵¹

- “CME Group regularly advertises the trading at ... the NYMEX ... Divisions on the Website and in digital and print magazines.”⁵²

- “[Opposer] first coined the NYMEX trademark forty years ago in 1980 in connection with exchange market services, and it has exclusively and continuously used the NYMEX mark since that time with those services.”⁵³

- “[Opposer] annually spends at least a million dollars on advertising, marketing and promoting the NYMEX brand and products traded on the NYMEX marketplace.”⁵⁴ LaPierre Exhibit J, reproduced below, is “[r]epresentative

⁵⁰ LaPierre Testimony Decl. ¶9 (61 TTABVUE 50-51).

⁵¹ LaPierre Testimony Decl. ¶15-16 (61 TTABVUE 52). LaPierre testified that CME Group’s palladium and platinum product pages on “the Website” had over 45,000 and 60,000 page views respectively in 2019 and were at that time on pace to surpass those page views in 2020. LaPierre Testimony Decl. ¶¶15-16 (61 TTABVUE 52).

⁵² LaPierre Testimony Decl. ¶17 (61 TTABVUE 52). Opposer attached a “Platinum and Gold Spread Trading” “case study” as a representative sample of its advertising NYMEX. LaPierre Testimony Exhibit D (61 TTABVUE 71-74). Opposer displays the CME GROUP logo as the dominant mark on the attached document. That is the trademark consumers will see and remember. NYMEX first appears on page 3 of the document buried in the text. Likewise with LaPierre Exhibit E (61 TTABVUE 76). Opposer prominently displays the marks CME GROUP and the CME GROUP logo but buries NYMEX in text.

⁵³ LaPierre Testimony Decl. ¶20 (61 TTABVUE 52).

⁵⁴ LaPierre Testimony Decl. ¶31 (61 TTABVUE 54).

advertising promoting the NYMEX brand that used previously on trading floors in New York and Chicago and on the Nasdaq Tower in Times Square.”⁵⁵



- “Individual traders utilize the services of NYMEX ... to engage in price discovery and execute trades for metals products.”⁵⁶
- “The NYMEX ... marketplaces connect a seller and buyer of metal products.”⁵⁷

⁵⁵ LaPierre Testimony Decl. ¶31 and Exhibit J (61 TTABVUE 54-55 and 104).

⁵⁶ LaPierre Testimony Decl. ¶35 (61 TTABVUE 55). *See also* Chang Testimony Decl. ¶10 (61 TTABVUE 121-122) (“[I]ndividuals, traders, financial institutions, investors, corporations and governments have come to rely upon and trust [Opposer] for their financial, investment and risk management services related to the trading of [platinum and palladium] products.”).

⁵⁷ LaPierre Testimony Decl. ¶36 (61 TTABVUE 55).

- “Third parties have come to associate the NYMEX brand with the trading of metals, especially the trading of precious metals like platinum and palladium, and energy products.”⁵⁸

- “[F]rom 2014 through 2016, the notional value of platinum and palladium contracts traded through the NYMEX marketplace was more than \$953 billion; and from 2017 through 2019 that notional value was \$1.2 trillion.”⁵⁹

- “Prices quoted on the NYMEX ... exchanges form a foundation for the prices that traders and institutions pay for various commodities around the world, including gold, platinum, palladium, crude oil, gasoline, number two heating oil, potatoes, and natural gas.”⁶⁰

Opposer’s testimony and evidence regarding the use of its NYMEX mark prove that NYMEX is a commercially strong, but not famous mark. First, we note that Opposer did not introduce any evidence of unsolicited media discussing the renown of Opposer’s NYMEX mark. Second, the representative samples of Opposer’s advertising focus on the CME GROUP mark and CME GROUP logo, not the NYMEX mark. This throws doubt on LaPierre’s testimony that Opposer spends a million dollars a year advertising the NYMEX service mark. Based on Opposer’s testimonial and evidentiary showing, it appears that a million dollars a year is primarily spent advertising CME GROUP and the CME GROUP logo with a nod to NYMEX.

⁵⁸ LaPierre Testimony Decl. ¶39 (61 TTABVUE 56).

⁵⁹ Chang Testimony Decl. ¶12 (61 TTABVUE 121-122).

⁶⁰ Chang Testimony Decl. ¶18 (61 TTABVUE 123).

While the renown of opposer's mark does not rise to the level of a famous mark, we find that it is commercially strong and entitled to a broad scope of protection.⁶¹

E. The similarity or dissimilarity of the marks.

We now turn to the *DuPont* likelihood of confusion factor focusing on the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression. *DuPont*, 177 USPQ at 567. "Similarity in any one of these elements may be sufficient to find the marks confusingly similar." *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014); accord *Krim-Ko Corp. v. Coca-Cola Bottling Co.*, 390 F.2d 728, 156 USPQ 523, 526 (CCPA 1968) ("It is sufficient if the similarity in either form, spelling or sound alone is likely to cause confusion.") (citation omitted).

In comparing the marks, we are mindful that where, as here, the services are in part legally identical, the degree of similarity necessary to find likelihood of confusion need not be as great as where there is a recognizable disparity between the services. *Coach Servs.*, 101 USPQ2d at 1721; *Century 21 Real Estate Corp. v. Century Life of*

⁶¹ Fame for likelihood of confusion and dilution is not the same. Fame for dilution requires a more stringent showing. *Palm Bay Imports*, 73 USPQ2d at 1694; *Toro Co. v. ToroHead Inc.*, 61 USPQ2d 1164, 1170 (TTAB 2001). Likelihood of confusion fame "varies along a spectrum from very strong to very weak" while dilution fame is an either/or proposition — it either exists or it does not exist. *Id.* See also *Carefirst of Maryland Inc. v. FirstHealth of the Carolinas Inc.*, 77 USPQ2d 1492, 1507 (TTAB 2005) (likelihood of confusion "[f]ame is relative . . . not absolute"). A mark, therefore, may have acquired sufficient public recognition and renown to be famous for purposes of likelihood of confusion without meeting the more stringent requirement for dilution fame. *Toro Co.*, 61 USPQ2d at 1170, citing *I.P. Lund Trading ApS v. Kohler Co.*, 163 F.3d 27, 47 USPQ2d 1225, 1239 (1st Cir. 1998) ("[T]he standard for fame and distinctiveness required to obtain anti-dilution protection is more rigorous than that required to seek infringement protection."). Because Opposer's testimony and evidence is not sufficient to prove NYMEX is famous for purposes of likelihood of confusion, it is not sufficient to prove fame for dilution and, therefore, we dismiss Opposer's dilution claim.

Am., 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992); *Jansen Enters. Inc. v. Rind*, 85 USPQ2d 1104, 1108 (TTAB 2007).

“The proper test is not a side-by-side comparison of the marks, but instead ‘whether the marks are sufficiently similar in terms of their commercial impression’ such that persons who encounter the marks would be likely to assume a connection between the parties.” *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 127 USPQ2d 1797, 1801 (Fed. Cir. 2018) (quoting *Coach Servs.*, 101 USPQ2d at 1721). While we can consider the individual features of the marks, ultimately the question is whether the marks in their entireties are similar. *In re Shell Oil*, 992 F.2d 1204, 26 USPQ2d 1687, 1688 (Fed. Cir. 1993).

The proper focus is on the recollection of the average customer, who retains a general rather than specific impression of the marks. *Geigy Chem. Corp. v. Atlas Chem. Indus., Inc.*, 438 F.2d 1005, 169 USPQ 39, 40 (CCPA 1971); *L’Oreal S.A. v. Marcon*, 102 USPQ2d 1434, 1438 (TTAB 2012); *Winnebago Indus., Inc. v. Oliver & Winston, Inc.*, 207 USPQ 335, 344 (TTAB 1980); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975). In this opposition, as discussed above, the relevant average customer is an individual, trader, seller or buyer of metal products, specifically platinum or palladium who exercises a high degree of purchasing care.

Applicant is seeking to register the mark NAMX, in standard character form, and Opposer’s mark is NYMEX, in standard character form.

Inasmuch as Opposer is using its mark in connection with, inter alia, “providing financial services, namely, providing ... electronic exchange markets for trading,

clearing, confirming transactions and other services in the field of commodity futures, options and other derivatives” to individuals, traders, sellers or buyers of metal products, specifically platinum or palladium, Opposer’s consumers are sophisticated consumers who recognize the mark as an abbreviation of New York Mercantile Exchange. *See ECI Div. of E-Sys., Inc. v. Environmental Commc’n Inc.*, 207 USPQ 443, 451 (TTAB 1980) (it is easier for consumers to remember letters arranged to suggest a well-known company name or word).

In this regard, Opposer and third parties often display the mark NYMEX in close conjunction with NEW YORK MERCANTILE EXCHANGE (e.g., New York Mercantile Exchange (NYMEX)).⁶² For example, the Investopedia website (investopedia.com) defines Opposer as set forth below:

New York Mercantile Exchange (NYMEX)

What is the New York Mercantile Exchange?

The New York Mercantile Exchange (NYMEX) is the world’s largest physical commodity futures exchange and is today part of the Chicago Mercantile Exchange Group

⁶² 61 TTABVUE 45, 61, 161, 262, 288, 1798, 1805, and 1828.

We recognize that NYMEX is the mark in Opposer’s pleaded registrations and that we are concerned with Opposer’s mark as registered, not as displayed in the marketplace or with any accompanying trade dress, *cf.* Trademark Rule 2.52, 37 C.F.R. § 2.52 (“A drawing depicts the mark sought to be registered.”), and that it is inappropriate to consider Opposer’s actual use to limit the way in which the registered mark could be used. *See In re Rexel Inc.*, 223 USPQ 830, 832 (TTAB 1984) (the addition of a house mark on the product/label is not relevant to the comparison of the marks if the house mark is not on drawing). Nevertheless, the context in which Opposer uses, and how others may refer to Opposer’s mark, is probative to determining whether relevant consumers will understand the derivation of the NYMEX abbreviation. *Cf. Nw. Golf Co. v. Acushnet Co.*, 226 USPQ 240, 244 (TTAB 1985) (“Evidence of the context in which a particular mark is used on labels, packaging, etc., or in advertising is probative of the significance which the mark is likely to project to purchasers.”).

(CME Group) which is the world's leading and most diverse derivatives marketplace.⁶³

Kevin LaPierre and Young-Jin Change testified regarding the association of the NYMEX abbreviation with the name New York Mercantile Exchange. They testified about Opposer's parent corporation operating financial exchanges or "Designated Contract Markets ("DCMs").

These DCMs are CME or Chicago Mercantile Exchange, CBOT or Chicago Board of Trade, COMEX or Commodity Exchange, and NYMEX or New York Mercantile Exchange.⁶⁴

Applicant's mark NAMX, on the other hand, is an arbitrary combination of letters with no apparent meaning based on the record before us as the letters do not correspond identically to the first letter in each of the words of the Applicant's name.⁶⁵ Thus, Applicant's mark NAMX and Opposer's mark NYMEX have different meanings and engender different commercial impressions.

Opposer contends, however, that the marks are similar in appearance.

Here, Applicant's NAMX mark and Opposer's NYMEX Mark differ by two letters, which are not the dominant letters in the mark.⁶⁶

We disagree. As discussed above, Opposer's mark NYMEX engenders the commercial impression NY MEX or New York Mercantile Exchange in part because NY is a well-

⁶³ LaPierre Testimony Declaration Exhibit A (61 TTABVUE 61).

⁶⁴ LaPierre Testimony Dec. ¶6 (61 TTABVUE 50); Chang Testimony Decl. ¶6 (61 TTABVUE 121).

⁶⁵ Although we recognize the possibility that some consumers could recognize NAMX as Applicant's initials, there is no evidence of record on which we can base such a finding.

⁶⁶ Opposer's Brief, pp. 14-15 (63 TTABVUE 19-20).

known abbreviation for New York.⁶⁷ On the other hand, Applicant's mark NAMX is an arbitrarily arranged combination of letters with no apparent meaning.

In addition, the letters NY, as the first part of Opposer's mark, will catch the viewers' attention and distinguish the two marks. *See Hercules Inc. v. Nat'l Starch & Chem. Corp.*, 223 USPQ 1244, 1246 (TTAB 1984) (considering the marks NATROL and NATROSOL in their entireties, the clearly dominant aspect of both marks is that the first four letters and the final two are the same.”).

Opposer also contends the marks sound alike.

Second, the phonetic or aural similarity between NAMX and NYMEX is undeniable. Both marks are two-syllable words beginning with “N” and ending “MEX.” The only difference is a slight distinction in the pronunciation of the first syllable, which is highly likely to get lost when the marks are spoken orally. Specifically, the first syllable of NAMX is pronounced with a short “a” sound (as in *bam*, *wham* or *scam*), while the first syllable in NYMEX is pronounced with a long “i” sound. The difference, therefore, between NAMX and NYMEX when spoken is very subtle.⁶⁸

Again, we disagree. First, it is well-settled that there is no single “correct” pronunciation of a trademark that is not a common English word because it is impossible to predict how the public will pronounce a particular mark. *See Edwards Lifesciences Corp. v. VigiLanz Corp.*, 94 USPQ2d 1399, 1401-02 (TTAB 2010).

⁶⁷ The MERRIAM-WEBSTER DICTIONARY (merriam-webster.com) (accessed September 6, 2021) defines “NY” as “New York.” The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format. *In re Cordua Rests. LP*, 110 USPQ2d 1227, 1229 n.4 (TTAB 2014), *aff'd*, 823 F.3d 594, 118 USPQ2d 1632 (Fed. Cir. 2016); *In re S. Malhotra & Co. AG*, 128 USPQ2d 1100, 1104 n.9 (TTAB 2018); *In re Red Bull GmbH*, 78 USPQ2d 1375, 1378 (TTAB 2006).

⁶⁸ Opposer's Brief, p. 15 (63 TTABVUE 20) (emphasis in original).

Nevertheless, because consumers recognize the letters NY in Opposer's mark NYMEX as the well-known abbreviation for New York, to the extent it is pronounced, consumers will say "New York Mex" or "NY Mex." On the other hand, based on standard English pronunciation, it is likely that consumers will pronounce Applicant's mark, if they say it at all, as Nam X or Name X because they will turn Nam into something they recognize.⁶⁹ However, it is just as likely that consumers will refer to NAMX by its letters (i.e., N-A-M-X).

We find the marks are more dissimilar than similar.

F. Conclusion

The factors that favor finding a likelihood of confusion are (i) Opposer's NYMEX is a commercially strong mark, (ii) the services at issue are in part legally identical, and (iii) we presume the services are offered in the same channels of trade to the same classes of consumers. On the other hand, the relevant consumers exercise a high degree of purchasing care and the marks are dissimilar. The conditions under which sales are made (i.e., the degree of purchaser care) and the dissimilarity of the marks outweigh the other factors. Accordingly, we find Applicant's mark NAMX for, inter alia, "financial services, namely, electronic funds transfer; clearing and reconciling financial transactions; ... currency exchange services" is not likely to cause confusion with Opposer's mark NYMEX for inter alia, "providing financial

⁶⁹ We recognize that Applicant's Chief Executive Officer testified that the marks sound similar. Hilton Discovery Dep., p. 55 (61 TTABVUE 142) ("Do they sound alike? Well, yeah, I guess they're kind of similar."). However, the Board makes its own findings of fact. See *Edwards Lifesciences*, 94 USPQ2d at 1402 ("[T]he Board is responsible for determining whether the marks are similar, and we will not substitute the opinion of a witness, even an expert witness, for our evaluation of the facts.").

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services, namely, providing open out-cry and electronic exchange markets for trading, clearing, confirming transactions and other services in the field of commodity futures, options and other derivatives.”

Decision: The opposition is dismissed.